

**APPENDIX F**  
**State of Indiana Office of Medicaid Policy and Planning**  
**Hoosier Healthwise Quality Strategy**  
**Failure to Perform/Non-compliance Remedies**

## **1.1 Non-compliance Remedies**

It is the State's primary goal to ensure that the MCO is delivering quality care to members. To assess attainment of this goal, the State monitors certain quality and performance standards, and holds the MCO accountable for being in compliance with contract terms. OMPP accomplishes this by working collaboratively with the MCO to maintain and improve programs, and not to impair health plan stability.

In the event that the MCO fails to meet performance requirements or reporting standards set forth in the contract or reporting MCO Reporting Manual, the State will provide the MCO with a written notice of non-compliance and may require any of the corrective actions or remedies discussed in Section 1.1.1 below. The State will provide written notice of non-compliance to the MCO within 60 calendar days of the State's discovery of such non-compliance.

If OMPP elects not to exercise a corrective action clause contained anywhere in the contract in a particular instance, this decision must not be construed as a waiver of the State's right to pursue future assessment of that performance requirement and associated damages, including damages that, under the terms of the contract, may be retroactively assessed.

### **1.1.1 Corrective Actions**

In accordance with 42 CFR 438, Subpart I, OMPP may require corrective action(s) when the MCO has failed to provide the requested services. The nature of the corrective action(s) will depend upon the nature, severity and duration of the deficiency and repeated nature of the non-compliance. The written notice of non-compliance corrective actions may be instituted in any sequence and include, but are not limited to, any of the following:

- Written Warning: OMPP may issue a written warning and solicit a response regarding the MCO's corrective action.
- Formal Corrective Action Plan: OMPP may require the MCO to develop a formal corrective action plan to remedy the breach. The corrective action plan must be submitted under the signature of the MCO's chief executive and must be approved by OMPP. If the corrective action plan is not acceptable, OMPP may provide suggestions and direction to bring the MCO into compliance.
- Withholding Full or Partial Capitation Payments: OMPP may suspend capitation payments for the following month or subsequent months when the State determines that the MCO is non-compliant. OMPP must give the MCO written notice 10 business days prior to the suspension of capitation payments and specific reasons for

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non-compliance that result in suspension of payments. The State may continue to suspend all capitation payments until non-compliance issues are corrected.

- Suspending Enrollment: OMPP may suspend the MCO's right to enroll new participants by disallowing self-selection by members and/or auto-assignment of members to the MCO. The State may suspend enrollment for the entire MCO or may selectively suspend enrollment for a region, county or a specific provider. The State will notify the MCO in writing of its intent to suspend new enrollment at least 10 business days prior to the first day of the suspension period. The suspension period may be for any length of time specified by the State. The State will base the duration of the suspension upon the nature and severity of the default and the MCO's ability to cure the default.
- Assigning the MCO's Membership and Responsibilities to Another MCO: The State may assign the MCO's membership and responsibilities to one or more other MCOs that also provide services to the Hoosier Healthwise population, subject to consent by the MCO that would gain that responsibility. The State must notify the MCO in writing of its intent to transfer members and responsibility for those members to another MCO at least 10 business days prior to transferring any members.
- Appointing Temporary Management of the MCO: The State may assume management of the MCO or may assign temporary management of the MCO to the State's agent, if at any time the State determines that the MCO can no longer effectively manage the MCO and provide services to members.
- Contract Termination: The State reserves the right to terminate the contract, in whole or in part, due to the failure of the MCO to comply with any term or condition of the contract, or failure to take corrective action as required by OMPP to comply with the terms of the contract. The State must provide 30 calendar days written notice and must set forth the grounds for termination. See Section 9.1 of the RFS for the basis upon which the State may terminate the contract.

1.1.2 Liquidated Damages

In the event that the MCO fails to meet performance requirements or reporting standards set forth in the contract or the MCO Reporting Manual, it is agreed that damages shall be sustained by the State, and the MCO shall pay to the State its actual or liquidated damages according to the following subsections and subject to the limitations provided in 42 USC Chapter Seven, Subchapter XIX, Section 1396u-2 (e).

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It is agreed that in the event of a failure to meet specified performance or reporting requirements subject to liquidated damages, it is and will be impractical and extremely difficult to ascertain and determine the actual damages which the State will sustain in the event of, and by reason of, such failure; and it is therefore agreed that the MCO will pay the State for such failures according to the following subsections. No punitive intention is inherent in the following liquidated damages provisions.

OMPP may impose remedies resulting from failure of the MCO to provide the requested services depending on the nature, severity and duration of the deficiency. In most cases, liquidated damages will be assessed based on the schedules in Section 1.2 of this APPENDIX. Should OMPP choose not to assess damages for an initial infraction or deficiency, it reserves the right to require corrective action or assess damages at any point in the future. OMPP will assess liquidated damages for any of the areas of non-compliance as listed in Section 1.2 of this Appendix or for any other areas of non-compliance, at the discretion of OMPP.

## **1.2 Areas of Non-Compliance**

### 1.2.1 Non-compliance with General Contract Provisions

The objective of this requirement is to provide the State with an administrative procedure to address issues where the MCO is not compliant with the contract. Through routine monitoring, the State may identify contract non-compliance issues. If this occurs, the State will notify the MCO in writing of the nature of the non-performance issue. The State will establish a reasonable period of time, but not more than 10 business days, during which the MCO must provide a written response to the notification. If the MCO does not correct the non-performance issue within the specified time, the State may enforce any of the remedies listed in Section 1.1 of this Appendix.

### 1.2.2 Non-compliance with Shadow Claims Data Submission

The MCO must comply with the shadow claims submission standards. The State will assess liquidated damages on the following elements of shadow claims submissions:

- Batch submission requirements: If the MCO fails to submit all claim types in any given week, the MCO will pay liquidated damages of \$2,000 for each time a claim type is not submitted during that month.
- Compliance with Pre-Cycle Edits: The MCO's shadow claim submission must pass pre-cycle edits. For each batch submitted, the MCO must reach a 98 percent compliance rate. The State will assess liquidated damages based on an overall

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average of calendar monthly submissions. For compliance levels lower than 98 percent, the State will assess the following liquidated damages:

<u>Percent of Claims Accepted</u>	<u>Liquidated Damages</u>
	<u>Amount</u>
93.0 - 97.9	\$ 200
88.0 - 92.9	600
83.0 - 87.9	1,000
78.0 - 82.9	1,400
76.0 - 77.9	1,800
0 - 75.9	2,000

In addition, if the MCO's non-compliance continues beyond one month, the State will multiply the amount of the liquidated damages by the number of months of continuing non-compliance. For example, if the MCO's rate of acceptance of shadow claims is below 75 percent for three consecutive months, the State will assess liquidated damages for the third month of non-compliance in the amount of \$6,000, or three times the monthly damage amount of \$2,000.

- Compliance with Back-end Edits: For each claim type submitted, 90 percent of those claims must pass the fiscal agent's back-end edits with a paid status in a calendar month. For compliance levels below 90 percent, OMPP may require corrective action plans, and will assess liquidated damages based on the schedule below:

<u>Percent of Details Accepted</u>	<u>Liquidated Damages</u>
	<u>Amount</u>
85.0 - 89.9	\$ 100
80.0 - 84.9	300
75.0 - 79.9	500
70.0 - 74.9	700
65.0 - 69.9	900
00.0 - 64.9	1,000

In addition, if the MCO's non-compliance continues beyond one month, the State will multiply the amount of the liquidated damages by the number of months of continuing non-compliance. For example, if the MCO's rate of acceptance of shadow claims is below 65 percent for three consecutive months, the State will assess liquidated damages for the third month of non-compliance in the amount of \$3,000, or three times the monthly damage amount of \$1,000.

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- Compliance with accuracy standards: The MCO must document its implementation of policies and procedures to ensure that shadow claims submissions are accurate; that is, that all shadow claims detail being submitted accurately represents the services provided and that the claims are accurately adjudicated according to the MCO's internal standards and all State and Federal requirements. OMPP will require the MCO to submit a corrective action plan and will require non-compliance remedies for the MCO's failure to comply with shadow claims accuracy reporting standards in accordance with Section 6.5.3 of the RFS.
- Compliance with completeness standards: The MCO must have in place a system for monitoring and reporting the completeness of claims and encounter data received from providers, i.e., for every service provided, providers must submit corresponding claim or encounter data with claim detail identical to that required for fee-for-service claims submissions. The MCO must also have in place a system for verifying and ensuring that providers are not submitting claims or encounter data for services that were not provided.

As part of its annual shadow claims work plan, the MCO must demonstrate its internal standards for measuring completeness, the results of any completeness studies and any corrective action plans developed to address areas of non-compliance. OMPP will require the MCO to submit a corrective action plan and will impose non-compliance remedies for the MCO's failure to comply with shadow claims completeness standards in accordance with Section 6.5.3 of the RFS.

**1.2.3 Non-compliance with Reporting Requirements**

The MCO Reporting Manual details the required formats, templates and submission instructions for the reports listed in the contract. OMPP may change the frequency of required reports, or may require additional reports, at OMPP's discretion. The State will assess liquidated damages of \$200 for each business day past the date due when reports are not delivered complete, on time, and in the correct reporting formats, or submitted incorrectly.

If the MCO's non-compliance with the reporting requirements impacts the State's ability to monitor the MCO's solvency, and the MCO's financial position requires the State to transfer members to another MCO, the State will require the MCO to pay any difference between the capitation rates that would have been paid to the MCO and the actual rates being paid to the replacement MCO as a result of member transfer. In addition the MCO must pay any costs the State incurs to accomplish the transfer of members. Further, OMPP will withhold all capitation payments or require corrective action until the MCO provides satisfactory financial data.

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**1.2.4 Non-compliance with Readiness Review Requirements**

If the MCO does not satisfactorily pass the readiness review prior to 30 calendar days before scheduled member enrollment, member enrollment may be delayed, or the State may require other remedies, and the MCO will be responsible for any costs associated with the delay. In addition, OMPP will assess liquidated damages in the amount of \$200 for each business day that the MCO delays submitting the readiness review responses past the expected dates due.

**1.3 Performance Bonds**

The MCO must provide a performance bond of standard commercial scope issued by a surety company registered with the IDOI, in the amount of \$1,000,000, to guarantee performance by the MCO of its obligations under the contract.

The State reserves the right to increase the required bond amount if enrollment levels indicate the need to do so. In the event of a default by the MCO, the State must, in addition to any other remedies it may have under the contract, obtain payment under the Performance Bond for the purposes of the following:

- Reimbursing the State for any expenses incurred by reason of a breach of the MCO's obligations under the contract, including, but not limited to, expenses incurred after termination of the contract for reasons other than the convenience of the State.
- Reimbursing the State for costs incurred in procuring replacement services.